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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 239

ALVIS MAYNARD, ADMINISTRATOR OF MARY A. RONAN, DECEASED, PETITIONER,

vs.

W. K. ELLIOTT, TRUSTEE IN BANKRUPTCY OF NANCY JANE VARNEY AND PRICY A. VARNEY

No. 240

JOHN B. VARNEY, PETITIONER,

vs.

W. K. ELLIOTT, TRUSTEE IN BANKRUPTCY OF NANCY JANE VARNEY AND PRICY A. VARNEY

No. 241

J. M. SMITH AND A. B. SCOTT, PETITIONERS,

vs.

W. K. ELLIOTT, TRUSTEE IN BANKRUPTCY OF NANCY JANE VARNEY AND PRICY A. VARNEY

No. 242

A. G. RUTHERFORD, PETITIONER,

vs.

W. K. ELLIOTT, TRUSTEE IN BANKRUPTCY OF NANCY JANE VARNEY AND PRICY A. VARNEY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 30, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,161, 35,162, 35,163, 35,164)

(35,161, 35,162, 35,163, 35,164)

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY

In Bankruptcy

In the Matter of Pricy A. Varney, Bankrupt

In the Matter of Nancy Jane Varney, Bankrupt

Order on Petition for Review of Claim of Alvis Maynard, Administrator of Mary A. Ronan, Deceased—Filed June 4, 1929

The petition for review of the order of Honorable B. O. Becker, Referee, entered December 17, 1927, coming on to be heard, and the court being advised, it is ordered that said petition for review be sustained; that the order of the Referee be set aside, the claim allowed, and this proceeding remanded to the Referee for further proceedings consistent herewith.

A. M. J. Cochran, Judge.

[fol. 2] In United States District Court

Order Allowing Appeal, Claim of Alvis Maynard, Administrator of Mary A. Ronan, Deceased—Filed June 4, 1929

The petition for appeal of W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, and the assignment of errors is ordered filed, and said appeal is allowed upon execution of bond by trustee in the sum of $200.00. Thereupon, the Trustee presented his bond, with Stanley Reed as surety, which bond is approved.

A. M. J. Cochran, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, CLAIM OF ALVIS MAYNARD, ADMINISTRATOR OF MARY A. RONAN—Filed June 4, 1929

To the Honorable A. M. J. Cochran, Judge United States District Court for the Eastern District of Kentucky:

Your petitioner, W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, conceiving himself aggrieved by the certain order entered herein on the 4 day of June, 1929, in the above entitled proceedings, setting aside the order of the Referee, entered December 17, 1927, expunging the claim of Alvis Maynard, Administrator of Mary A. Ronan, deceased, for $3,150.00, and directing that this claim be allowed, does hereby petition for an appeal from the said order of the United States District Court for the Eastern District of Kentucky, the United States Circuit Court of Appeals for the Sixth Circuit, and prays that his appeal may be allowed, and that a citation may be granted, directed to said Alvis Maynard, Administrator of Mary A. Ronan, commanding him to appear before the [fol. 3] United States Circuit Court of Appeals for the Sixth Circuit to hear and receive that which may pertain to justice to be done in the premises; that a transcript of the record in said proceedings, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Sixth Circuit.

W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, by Browning & Reed, Stratton & Stephenson, His Solicitors.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS, ALVIS MAYNARD, ADMINISTRATOR, ETC.—Filed June 4, 1929

Now comes W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, and files this his assignments of errors, complaining as follows:

(1) That the order of the District Court allowing the claim of Alvis Maynard, Administrator of Mary A. Ronan,

was contrary to law in that it was based upon a ruling that it was inequitable to decree the expunction of said claim.

(2) In that it permitted the claimant to make proof of claim on a liability of the bankrupt which was not a fixed liability as evidenced by judgment or instrument in writing absolutely owing at the time of the filing of the petition in bankruptcy.

(3) In that the endorsement of the bankrupts on a negotiable instrument not due at the date of the bankruptcy was allowed as a claim against the bankrupt estates.

(4) In that it was, in effect, held that an objection or petition to expunge might not be filed against a claim at any [fol. 4] time during the pendency of the bankruptcy proceedings.

(5) In that it was, in effect, held that the Trustee had been guilty of laches in not filing his petition to expunge and objection at an earlier date.

Stratton & Stephenson, Browning & Reed, Solicitors for Petitioner.

Bond on appeal for $200.00, approved and filed June 4, 1929, omitted in printing.

[fol. 5] IN UNITED STATES DISTRICT COURT

STIPULATION RE APPEAL—Filed June 4, 1929

It is hereby stipulated and agreed that compliance with Equity Rule 75, and each and every part thereof, is hereby waived on the appeal of W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, appellant, and Alvis Maynard, Administrator of Mary A. Ronan, deceased; that neither party thereto shall be required to file a præcipe; that notice of intention to file petition for appeal is waived.

Pursuant to Equity Rule 77, and with the approval of the Honorable A. M. J. Cochran, Judge of the United States District Court for the Eastern District of Kentucky, it

is further stipulated that the following agreed statement of record on appeal, when filed in the office of the Clerk of the District Court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree, and such statement shall be copied and certified to the Appellate Court as the record on appeal.

IN UNITED STATES DISTRICT COURT

AGREED STATEMENT OF RECORD ON APPEAL

(1) Pricy A. Varney and Nancy Jane Varney were adjudged bankrupts on their voluntary petition, in the United States District Court for the Eastern District of Kentucky, on the 3rd day of August, 1925, and their cases referred to the Honorable B. O. Becker, one of the referees, before whom both proceedings are now pending. Thereafter, on August 18, 1925, W. K. Elliott, Esquire, appellant herein, was appointed, qualified and is now acting as trustee of each estate.

(2) On August 18, 1925, appellee's decedent, Mary A. Ronan, filed a claim against the estates of each of the bankrupts based on a note, copy of which follows:

[fol. 6] "$3000.00. Williamson, W. Va., Oct. 3, 1924.

One year after date I promise to pay to the order of W. P. T. Varney Three Thousand Dollars, Value received, negotiable and payable at The Day and Night Bank, Williamson, W. Va.

Int. 6%. Fred H. Varney.

Endorsement on back: Nancy Jane Varney, Pricy A. Varney, W. P. T. Varney.

An order was that day entered al-owing the claim for the full amount in each bankruptcy.

(3) On February —, 1926, a dividend of ten per cent was declared and paid on the claim allowed against Pricy A. Varney's estate; this dividend was paid from the income of the estate. No property of this estate or of Nancy Jane Varney's estate has been sold.

(4) On July 25, 1927, the Trustee filed a petition to re-examine and expunge these claims in both estates, alleging that in the admisistration of the estates of these bankrupts, the trustee, on October 17, 1925, filed a petition to re-examine and expunge the claim of the First National Bank of Pikeville, predicated on three notes endorsed by the bankrupts, none of which were due at the adjudication. One of the grounds of objection was that the notes were not provable under Section 63A, because not obsolutely owing at the date of the adjudication. The Referee denied the prayer of the Trustee's petition on January 26, 1926. The District Court granted the prayer of the petition and sustained the exception of the Trustee, on May 26, 1926, on the ground of non protest of one, and that two of said notes fell due more than one year from the date of the adjudication, and the action of the District Court was affirmed by this court on May 13, 1927, on the ground that none of said notes were provable under Section 63-A 4 of the Bankruptcy Act, the case being First National Bank v. Elliott, 19 F. (2) 426. The right of review expired June 12, 1927.

The petitions further alleged that each of these bankrupts were endorsers on said note; that on August 3, 1925, the date of adjudication in bankruptcy in both estates, the note was not due; that at the time of said adjudication said [fol. 7] note was not a fixed liability absolutely owing at the time of the filing of the petition in bankruptcy, and was not then payable.

(5) Answers were filed by the claimant pleading (a) laches in the trustee; (b) Provability of the claim under Section 63-A of the Bankruptcy Act.

(6) The referee sustained the petition to re-examine the claims and expunged them.

(7) The petition for review was duly taken to the District Court, and that court set aside the order of the Referee and directed the allowance of the claim on 4 day of June, 1929.

(8) Pending the proceedings, the claimant, Mary A. Ronan died, and by proper orders, the proceeding was revived in the name of Alvis Maynard, Administrator of Mary A. Ronan.

(9) It was agreed that the two petitions for re-examination and to expunge might be heard together on the same record.

Agreed.

Stratton & Stephenson, Browning & Reed, Solicitors for Appellant, W. W. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Varney. Randolph Bias, Solicitors for Alvis Maynard, Administrator of Mary A. Ronan.

Approved. A. M. J. Cochran, District Judge.

[fol. 8] Citation, in usual form, showing service on Randolph Bias, omitted in printing.

[fols. 9 & 10] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 11] In United States District Court, Eastern District of Kentucky

In Bankruptcy

In the Matter of Pricy A. Varney, Bankrupt

In the Matter of Nancy Jane Varney, Bankrupt

Order on Petition for Review of Claim of John B. Varney—Filed June 4, 1929

The petition for review of the order of Honorable B. O. Becker, Referee, entered December 17, 1927, coming on to be heard, and the Court being advised, it is ordered that said Petition for Review be sustained; that the order of the Referee be set aside; the claim allowed, and this proceeding be remanded to the Referee for further proceedings consistent herewith.

A. M. J. Cochran, Judge.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed June 4, 1929

The petition for appeal of W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, and the assignment of errors, is ordered filed, and said appeal is allowed on the execution of a bond by the Trustee, in the sum of $200.00.

Thereupon the Trustee presented his bond, with Stanley Reed as surety, which bond is approved.

A. M. J. Cochran, Judge.

[fol. 12] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable A. M. J. Cochran, judge of the United States District Court for the Eastern District of Kentucky:

Your petitioner, W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, conceiving himself aggrieved by the certain order entered herein on the 4 day of June, 1929, in the above entitled proceedings, setting aside the order of the Referee entered December 17, 1927, expunging the claim of John B. Varney for $3,000.00, and directing that this claim be allowed, does hereby petition for an appeal from the said order of the District Court for the Eastern District of Kentucky, to the United States Circuit Court of Appeals for the Sixth Circuit, and prays that his appeal may be allowed, and that a citation may be granted, directed to said John B. Varney, commanding him to appear before the United States Circuit Court of Appeals for the Sixth Circuit, to hear and receive that which may pertain to justice to be done in the premises; that a transcript of the record and evidence in said proceedings, duly authenticated may be transmitted to the United States Circuit Court of Appeals for the Sixth Circuit.

W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, by Browning & Reed, Stratton & Stephenson, His Attorneys.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed June 4, 1929

Now comes W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, and files this his assignment of errors, complaining as follows:

[fol. 13] (1) That the order of the District Court allowing the claim of John B. Varney for $3,000.00 was contrary to law, in that it was based upon a ruling that it was inequitable to decree the expunction of said claim.

(2) In that it permitted the claimant to make proof of claim on liabilities of the bankrupts which were not a fixed liability as evidenced by a judgment or an instrument in writing absolutely owing at the time of the filing of the petition in bankruptcy.

(3) In that the endorsement of the bankrupt on a negotiable instrument not due at the date of the bankruptcy was allowed as a claim against the bankrupt estate.

(4) In that it was in effect held that an objection or petition to expunge might not be filed against a claim at any time during the pendency of the bankruptcy proceedings.

(5) In that it was, in effect, held that the Trustee had been guilty of laches in not filing his petition to expunge or objection at an earlier date.

Browning & Reed, Stratton & Stephenson, Attorneys for Trustee.

Bond on appeal for $200.00 approved; omitted in printing.

[fol. 14] IN UNITED STATES DISTRICT COURT

STIPULATION RE APPEAL—Filed June 4, 1929

It is hereby stipulated and agreed that compliance with Equity Rule 75 and each and every part thereof, is hereby waived on the appeal of W. K. Elliott, Trustee in Bank-

ruptcy of Pricy A. Varney and Nancy Jane Varney, appellant, and John B. Varney, appellee; that neither party thereto shall be required to file a præcipe; that notice of the intention to file a petition for appeal is waived.

Pursuant to Equity Rule 77, and with the approval of the Honorable A. M. J. Cochran, Judge of the United States District Court for the Eastern District of Kentucky, it is further stipulated that the following agreed statement of record on appeal, when filed in the office of the Clerk of the District Court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree, and such statement shall be copied and certified to the Appellate Court as the record on appeal.

[fol. 15] IN UNITED STATES DISTRICT COURT

AGREED STATEMENT OF RECORD ON APPEAL

(1) Pricy A. Varney and Nancy Jane Varney were adjudged bankrupts on their voluntary petition in the United States District Court for the Eastern District of Kentucky, on the 3rd day of August, 1925, and their cases referred to the Honorable B. O. Becker, one of the referees, before whom both proceedings are now pending. Thereafter, on August 18, 1925, W. K. Elliott, Esquire, appellant herein, was appointed, qualified and is now acting as trustee of each estate.

(2) On August 18, 1925, the appellee, John B. Varney, filed a claim against the estates of each of the bankrupts based on a note, copy of which follows:

$3,000. Williamson, W. Va., Oct. 3, 1924.

Two years after date I promise to pay to the order of W. P. T. Varney, three thousand (Pay $3,000 and 00 cts.) Dollars, value received, negotiable and payable at the Day and Night Bank, Williamson, W. Va.

(Signed) Fred H. Varney.

Endorsed on the reverse side: Nancy Jane Varney, Pricy A. Varney, W. P. T. Varney.

An order was that day entered allowing the claim for the full amount in each bankruptcy.

(3) On February —, 1926, a dividend of ten per cent was declared and paid on the claim allowed against Pricy A. Varney's estate. This dividend was paid from income of the estate. No property of this estate nor of Nancy Jane Varney's estate has been sold.

(4) On July 25, 1927, the Trustee filed a petition to re-examine and expunge these claims in both estates, alleging that in the administration of the estate of these bankrupts the trustee on October 17, 1925, filed a petition to re-examine and expunge a claim of the First National Bank of Pikeville predicated on three notes endorsed by the bankrupts, none of which were due at the adjudication. One of the grounds of objection was that the note was not provable under Section 63-A because not absolutely owing at the date of adjudication. The referee denied the prayer of the trustee's petition on January 26, 1926. The District Court granted the prayer of the petition and sustained the exception of the trustee on May 26, 1926, on the ground [fol. 16] of non-protest of one and that two of said notes fell due more than one year from the date of adjudication, and the action of the District Court was affirmed by this court on May 13, 1927, on the ground that none of said notes were provable under 63-A4 of the Bankruptcy Act, the case being First National Bank v. Elliott, 19 F. (2d) 426. The right of review expired June 12, 1927.

The petitions further alleged (1) that these claims were not provable under the Bankruptcy Act 63A; and, (2), that they were not provable until the due date of the note, which, as it was more than twelve months from the date of the bankruptcies, barred their proof.

(5) Answers were filed by the claimant pleading (a) laches in the trustees; (b) provability of the claim under section 63-A of the Bankruptcy Act; and (c), estoppel based on prejudice to the claimant by reason of the delay in filing the petition to re-examine and by reason of the payment of the dividend in the Pricy A. Varney estate.

(6) The answer of claimant likewise showed claimant was prejudiced by the delay in filing the petition to re-examine in that no petition to re-examine or expunge be-

ing filed before the maturity of the note upon which the claim is based, the claimant believed there could be, and was, no question as to the provability of the claim, and accordingly, the note was not protested at maturity; and, since not so protested, the endorsers and bankrupts can not be held liable after their discharge; whereas, if a petition to re-examine had been filed within one year, or at any time before the note matured, it would have been protested and in that case, if finally held not to be a provable claim, it would have been a collectable debt against the bankrupts after their discharge.

(7) A stipulation was filed agreeing that at the time the petitions were filed and continuously to that time the payor and payee of the note were wholly insolvent and both had been discharged in bankruptcy.

(8) The referee sustained the petition to re-examine the claims and expunged them.

(9) A petition for review was duly taken to the District Court and that Court set aside the order of the Referee and directed the allowance of the claim on 4 day of June, 1929.

(10) It was agreed that the two petitions for re-examination to expunge might be heard together on the same record.

[fol. 17] Agreed.

Stratton & Stephenson, Browning & Reed, Solicitors for Appellant, W. K. Elliott, Trustee. Randolph Bias, Solicitor for John B. Varney.

Approved. A. M. J. Cochran, District Judge.

Citation, in usual form, showing service on Randolph Bias, omitted in printing.

[fol. 18] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 19] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY

In Bankruptcy

In the Matter of PRICY A. VARNEY, Bankrupt

In the Matter of NANCY JANE VARNEY, Bankrupt

ORDER ON PETITION FOR REVIEW OF CLAIM OF J. M. SMITH AND A. B. SCOTT—Filed June 4, 1929

The petition for review of the order of the Honorable B. O. Becker, Referee, entered December 17, 1927, coming on to be heard and the court being advised, it is ordered that said petition for review be sustained; that the order of the Referee be set aside, the claim allowed, and this proceeding is remanded to the Referee for further proceedings consistent herewith.

A. M. J. Cochran, Judge.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed June 4, 1929

The petition for appeal of W. K. Elliott, Trustee in bankruptcy of Pricy A. Varney and Nancy Jane Varney, and the assignment of errors is ordered filed, and said appeal is allowed on the execution of a bond by the Trustee, in the sum of Two Hundred.

Thereupon the Trustee presented his bond, with Stanley Reed, as surety, which bond is approved.

A. M. J. Cochran, Judge.

[fol. 20] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, CLAIM OF J. M. SMITH AND A. B. SCOTT—Filed June 4, 1929

To the Honorable A. M. J. Cochran, judge of the United States District Court for the Eastern District of Kentucky:

Your petitioner, W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, conceiving himself aggrieved by a certain order entered herein on the 4 day of June, 1929, in the above entitled proceedings setting aside the order of the Referee entered December 17, 1927, expunging the claim of J. M. Smith and A. B. Scott for $7,560.00, and directing that this claim be allowed, does hereby petition for an appeal from the said order of the District Court for the Eastern District of Kentucky, to the United States Circuit Court of Appeals for the Sixth Circuit, and prays that his appeal may be allowed, and that a citation may be granted, directed to said J. M. Smith and A. B. Scott, commanding them to appear before the United States Circuit Court of Appeals for the Sixth Circuit to hear and receive that which may pertain to justice to be done in the premises; that a transcript of the record and evidence in said proceedings, duly authenticated may be transmitted to the United States Circuit Court of Appeals for the Sixth Circuit.

W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, by Browning & Reed, Stratton & Stephenson, His Attorneys.

[fol. 21] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed June 4, 1929

Now comes W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, and files this his assignment of errors, complaining as follows:

(1) That the order of the District Court allowing the claim of J. M. Smith and A. B. Scott for $7,560.00 was con-

trary to law, in that it was based upon a ruling that it was inequitable to decree the expunction of said claim.

(2) In that it permitted a claimant to make proof of claim of liabilities of the bankrupt, which were not a fixed liability as evidenced by a judgment or instrument in writing, absolutely owing at the time of the filing of the petition in bankruptcy.

(3 In that the endorsements of the bankrupts on negotiable instruments not due at the date of the bankruptcy were allowed as claims against the bankrupt estate.

(4) In that it was in effect held that an objection or petition to expunge may not be filed against a claim at any time during the pendency of the bankruptcy proceedings.

(5) In that it was in effect held that Trustee had been guilty of laches on not filing his petition to expunge or objection at an earlier date.

Browning & Reed, Stratton & Stephenson, Attorneys for Trustee.

Bond on appeal for $200.00, approved and filed June 4, 1929, omitted in printing.

[fol. 22] IN UNITED STATES DISTRICT COURT

STIPULATION RE APPEAL—Filed June 4, 1929

It is hereby stipulated and agreed that compliance with Equity Rule 75 and each and every part thereof, is hereby waived on the appeal of W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney, appellant, and J. M. Smith and A. B. Scott, appellees; that neither party thereto shall be required to file a præcipe; that notice of the intention to file a petition for appeal is waived.

Pursuant to Equity Rule 77, and with the approval of the Honorable A. M. J. Cochran, Judge of the United States District Court for the Eastern District of Kentucky, it is further stipulated that the following agreed statement of

record on appeal, when filed in the office of the Clerk of the District Court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than [fol. 23] the decree, and such statement shall be copied and certified to the Appellate Court as the record on appeal.

IN UNITED STATES DISTRICT COURT

AGREED STATEMENT OF RECORD ON APPEAL

(1) Pricy A. Varney and Nancy Jane Varney were adjudged bankrupts on their voluntary petition in the United States District Court for the Eastern District of Kentucky, on the 3rd day of August, 1925, and their cases referred to the Honorable B. O. Becker, one of the referees, before whom both proceedings are now pending. Thereafter, on August 18, 1925, W. K. Elliott, Esquire, appellant herein was appointed, qualified, and is now acting as Trustee of each estate.

On August 18, 1925, the appellees, J. M. Smith and A. B. Scott, filed a claim against the estates of each of the bankrupts, based on three notes a copy of each of which follows:

"$2,400.00. Williamson, W. Va., Oct. 3rd, 1924.

One year after date I promise to pay to the order of W. P. T. Varney Twenty four hundred Dollars, Value received, Negotiable and payable at The Day and Night Bank, Williamson, W. Va., with 6% interest.

Ferd H. Varney.

Endorsement on back: Pricy A. Varney, Nancy Jane Varney."

"$2,400.00. Williamson, W. Va., Oct. 3rd, 1924.

Two years after date I promise to pay to the order of W. P. T. Varney Twenty Four Hundred Dollars, Value [fol. 24] received, Negotiable and payable at The Day and Night Bank, Williamson, W. Va., with 6% interest.

Ferd H. Varney.

Endorsement on back: Pricy A. Varney, Nancy Jane Varney."

"$2,400.00 Williamson, W. Va., Oct 3rd, 1924.

Three years after date I promise to pay to the — of W. P. T. Varney Twenty Four Hundred Dollars, Value received, Negotiable and payable at The Day and Night Bank, Williamson, W. Va., with 6% interest.

Ferd H. Varney."

Endorsement on back: "Pricy A. Varney, Nancy Jane Varney."

An order was that day entered allowing the claim for the full amount in each bankruptcy.

(3) On February —, 1926, a dividend of ten per cent was declared and paid on the claims allowed against Pricy A. Varney's estate. This dividend was paid from income of the estate. No property of this estate, nor Nancy Jane Varney's estate has been sold.

(4) On July 25, 1927, the trustee filed a petition to re-examine and expunge these claims in both estates, alleging that in the administration of the estate of these bankrupts the Trustee on October 17, 1925, filed a petition to re-examine and expunge a claim of the First National Bank of Pikeville, predicated on three notes endorsed by the bankrupts, none of which were due at the adjudication. One of the grounds of objection was that the note was not provable under Section 63-A of the Bankruptcy Act, because not absolutely owing at the date of adjudication. The Referee denied the prayer of the Trustee's petition on January 26, 1926. The District Court granted the prayer of the petition and sustained the exception of the Trustee on May 26, 1926, on the ground of non-protest of one, and that two of said notes fell due more than one year from the date of adjudication, and the action of the District Court was affirmed by this court on May 13, 1927, on the ground that none of said notes were provable under Section 63A-4 of the Bankruptcy Act, the case being First National Bank v. [fol. 25] Elliott, 19 F. (2) 426. The right of review expired June 12, 1927.

The petition further alleged (1) that these bankrupts were endorsers only on each of said notes at the time of said bankruptcy; that none of said notes were a fixed liability absolutely owing at the time of the filing of the peti-

tion in bankruptcy, and none of them were then payable; (2) that two of said notes were not due, and would not become due for more than twelve months after the date of these bankruptcies, and neither of them will become a fixed liability nor will either be absolutely owing, until the due date thereof, and until proper proceedings are taken for fixing the liability of the endorsers by presentment and notice of dishonor.

(5) Answers were filed by the claimant pleading (a) laches in the Trustee; (b) provability of the claim under Section 63-A of the bankruptcy act; (c) estoppel based on prejudice to the claimants by reason of the delay in filing petition to re-examine, and by reason of the payment of the dividend in the Pricy A. Varney estate.

(6) The answer of claimants likewise showed claimants were prejudiced by the delay in filing the petition to re-examine, in that no petition to re-examine or expunge being filed before the maturity of the second note upon which the claim is based, the claimants believed there could be, and was no question as to the provability of this note, and accordingly the note was not protested at maturity, and since not so protested the endorsers and bankrupts can not be held liable after their discharge, whereas if the petition to re-examine had been filed within one year, or at any time before the note matured, it would have been protested, and in that case, if finally held not to be a provable claim, it would have been a collectable debt against the bankrupts after their discharge. The first note, maturing October 3, 1925, was duly protested. The third note, maturing after the petition to re-examine was filed was duly protested.

(7) A stipulation was filed agreeing that at the time the petitions were filed and continuously to that time, the payor and payee of the three notes were wholly insolvent and both had been discharged in bankruptcy.

(8) The Referee sustained the petition to re-examine the claims, and expunge them.

(9) The petition for review was duly taken to the District Court, and that court set aside the order of the Referee, and directed the allowance of the claim on the 4 day of June, 1929.

[fol. 26] (10) It was agreed that the two petitions for re-examination and to expunge might be heard together on the same record.

Agreed.

Stratton & Stephenson, Browning & Reed, Solicitors for W. K. Elliott, Trustee in Bankruptcy of Pricy A. Varney and Nancy Jane Varney. Randolph Bias, Solicitors for J. M. Smith and A. B. Scott.

Approved. A. M. J. Cochran, United States District Judge.

Citation, in usual form, showing service on Randolph Bias, omitted in printing.

[fols. 27 & 28] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 29] In United States District Court, Eastern District of Kentucky

In Bankruptcy

In the Matter of Nancy Jane Varney, Bankrupt

Order on Petition for Review of Claim of A. G. Rutherford—Filed June 4, 1929

The petition for review of the Trustee, W. K. Elliott, of the order of the Honorable B. O. Becker, Referee, entered December 17, 1927, coming on to be heard, and the court being advised, it is ordered that said petition for review be overruled; that the order of the Referee be affirmed, the claim allowed, and this proceeding is remanded to the Referee for further proceedings consistent herewith.

A. M. J. Coleman, Judge.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL, A. G. RUTHERFORD CLAIM—Filed June 4, 1929

The petition for appeal of W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney and the assignment of errors is ordered filed, and said appeal is allowed upon execution of bond by the Trustee in the sum of Two Hundred.

Thereupon, the Trustee presented his bond with Stanley Reed as surety, which bond is approved.

A. M. J. Cochran, Judge.

[fol. 30] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, CLAIM OF A. G. RUTHERFORD—Filed June 4, 1929

To the Honorable A. M. J. Cochran, judge of the United States District Court for the Eastern District of Kentucky:

Your petitioner, W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney, conceiving himself aggrieved by the certain order endered herein on 4 day of June, 1929, in the above entitled proceedings, affirming the order of the Referee entered December 17, 1927, refusing to reconsider the claim of A. G. Rutherford for $15,000.00, and directing that this claim be allowed, does hereby petition for an appeal from the said order of the District Court for the Eastern District of Kentucky, to the United States Circuit Court of Appeals for the Sixth Circuit, and prays that his appeal may be allowed, and that a citation may be granted, directed to said A. G. Rutherford, commanding him to appear before the United States Circuit Court of Appeals for the Sixth Circuit to hear and receive that which may pertain to justice to be done in the premises; that a transcript of the record and evidence in said proceedings, duly au-

thenticated, may be transmitted to the United States Circuit Court of Appeals for the Sixth Circuit.

W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney, by Browning & Reed, Stratton & Stephenson, His Solicitors.

[fol. 31] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS, CLAIM OF A. G. RUTHERFORD—Filed June 4, 1929

Now comes W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney, and files this, its assignment of errors, complaining as follows:

(1) That the order of the District Court affirming the order of the Referee, allowing the claim of A. G. Rutherford for $15,000.00 was contrary to law, in that it was based upon a ruling that it was inequitable to decree the expunction of said claim;

(2) In that it permitted the claimant to make proof of claim on a liability of the bankrupt which was not a fixed liability as evidenced by a judgment or instrument in writing absolutely owing at the time of the filing of the petition in bankruptcy;

(3) In that the endorsement of the bankrupt on a negotiable instrument not due at the date of the bankruptcy was allowed as a claim against the bankrupt estate;

(4) That it was, in effect, held that an objection or petition to expunge might not be filed against a claim at any time during the pendency of the bankruptcy proceedings;

(5) In that it was, in effect, held that the trustee had been guilty of laches in not filing his petition to expunge or objection at an earlier date;

(6) In that the ruling of the District Court determined that a claim filed upon two notes of different parties could not have the validity of each of said notes determined in separate reconsiderations and exceptions.

Browning & Reed, Stratton & Stephenson, Solicitors for W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney.

[fol. 32] Bond on appeal for $200.00, approved and filed June 4, 1929, omitted in printing.

IN UNITED STATES DISTRICT COURT

STIPULATION RE APPEAL—Filed June 4, 1929

It is hereby stipulated and agreed that compliance with Equity Rule 75, and each and every part thereof, is hereby waived on the appeal of W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney, appellant, and A. G. Rutherford, appellee; that neither party thereto shall be required to file a præcipe, and that notice of intention to file a petition for appeal is waived.

[fol. 33] Pursuant to Equity Rule 77, and with the approval of the Honorable A. M. J. Cochran, Judge of the United States District Court for the Eastern District of Kentucky, it is further stipulated that the following agreed statement of record on appeal, when filed in the office of the Clerk of the District Court, shall be treated as superseding, for the purposes of the appeal, all parts of the record, other than the decree, and such statement shall be copied and certified to the Appellate Court as the record on appeal.

IN UNITED STATES DISTRICT COURT

AGREED STATEMENT OF RECORD ON APPEAL

(1) Nancy Jane Varney was adjudged a bankrupt on her voluntary petition, in the United States District Court for the Eastern District of Kentucky, on the 3rd day of August, 1925, and her case was referred to the Honorable B. O. Becker, one of the referees, before whom said proceeding is now pending. Thereafter, on August 15, 1925, W. K. Elliott, Esquire, appellant herein, was appointed, qualified and is now acting as trustee of said estate.

(2) On August 18, 1925, the appellee, A. G. Rutherford, filed a claim against the estate of the bankrupt based on two notes, one for $38,000.00, signed by the bankrupt, and

one for $15,000.00, which was in words and figures as follows:

"$15,000.00. Williamson, W. Va., September 25, 1924.

One year after date I promise to pay to the order of W. P. T. Varney Fifteen Thousand Dollars, Value received, negotiable and payable at the Day and Night Bank, Williamson, W. Va., with 6% interest.

Pricy A. Varney."

[fol. 34] Endorsements on back: "Nancy Jane Varney, W. P. T. Varney, J. M. Pinson."

An order was that day entered allowing the claim of the appellee as predicated upon both of said notes.

A petition for re-examination was thereafter filed by the Trustee, directed solely against the $38,000.00 note, which petition was allowed, and the claim, so far as it was predicated upon the $38,000.00 note, was expunged. On petition for review to the District Court and appeal to the Circuit Court of Appeals for the Sixth Circuit the action of the Referee was affirmed.

(3) No dividend has been declared of paid on the $15,000.00 claim allowed against Nancy Jane Varney's estate. A dividend of ten per cent was declared and paid, on February —, 1926, on the $15,000.00 claim based on the above note, from the estate of Pricy A. Varney, bankrupt, and maker of the note.

(4) On July 25, 1927, the Trustee filed a petition to re-examine and expunge this claim in the Nancy Jane Varney estate, alleging that in the administration of that estate, the Trustee, on October 27, 1925, filed a petition to re-examine and expunge a claim of the First National Bank of Pikeville, predicated upon three notes endorsed by the bankrupt, none of which were due at the adjudication. One of the grounds of objection was that the notes were not provable under Section 63A, because absolutely owing at the date of adjudication. The Referee denied the prayer of the Trustee's petition on January 26, 1926. The District Coprt granted the prayer of the petition, and sustained the exception of the Trustee, on May 26th, 1926, on the ground of non-protest of one and that two of said notes fell due

more than one year from the date of adjudication, and the action of the District Court was affirmed by this court on May 13, 1927, on the ground that none of said notes were provable under Section 63-A 4 of the Bankruptcy Act, the case being First National Bank v. Elliott, 19 F. (2d) 426. The right of review expired June 12, 1927.

The petition further alleged that this claim was not provable under the Bankruptcy Act, 63-A, because of the fact that it was an endorsement of the bankrupt on a note not absolutely owing at the date of the adjudication.

(5) An answer was filed by the claimant, alleging:

(a) That the note was the basis for a provable claim, [fol. 35] because it fell due on September 24, 1925, within on- year from the date of bankruptcy;

(b) That it would be grossly inequitable, after the expiration of the time within which claims might be proven, to reconsider the allowance of the claim under Section 57-K of the Act of May 27, 1926. No proper cause or good reason, or equities, for such action appearing;

(c) That the conduct of the Trustee by remaining silent and failing to move for a period of two years after the claim was proven and allowed, and the time for filing an amended or new proof of loss had expired, was contrary to the rules of equity and the dictates of natural justice.

(d) That the delay of the trustee had prejudiced the rights of the claimant, and his petition is barred by lapse of time (laches).

(e) That the note in question is in legal effect the joint note of the three Varneys, Nancy Jane, Pricy A., and W. P. T.; that the liability of each of whom was fixed and definite, and in nowise contingent or unliquidated at the time of the filing of the proof of loss.

(f) That Pricy A. Varney and Nancy Jane Varney were adjudged bankrupts simultaneously, and W. P. T. Varney, the payee of the note, before said petitions were filed was notoriously and hopelessly insolvent and bankrupt, which was known to Pricy A. Varney and Nancy Jane Varney; that, therefore, the note was, in fact, at the time of the filing of the petition, a fixed liability absolutely owing.

(g) That petitioner's objection against the claim because the liability on the endorsement did not mature until one month after the adjudication, was without merit for the reason that it became a fixed liability on its due date, within a year after bankruptcy, and if objection, to the claim had been made within the year, an amended proof of claim could and would have been filed, it having been protested.

(h) Because of the knowledge of the bankruptcy and the inability of the payee of the note to pay one per cent of his liabilities, the bankrupt knew at the time her petition was filed that she would be required to pay, in so far as here assets would go, said note, it was therefore a fixed liability absolutely owing;

(i) That the Trustee had filed exceptions to and petition to expunge the claim based on the $38,000.00 note, and had filed none on the $15,000.00 note; that this lulled the claimant to security, and if this had not been done, he [fol. 36] would have filed an amended or new proof of claim as to the $15,000.00 note;

(j) By an amended answer, defendant further pleaded:

A. That the long delay—of nearly two years—was and is prejudicial, and therefore inequitable to him, for the reason that he was and has been deprived of his opportunity to bring an action against the said bankrupt in her individual capacity, and thereby to have secured an early judgment as against her, and a priority of lien over such property as she may have acquired since her adjudication in bankruptcy; provided, as of course, that the petitioner's proposition of law to the effect that the claim was not provable, be well taken in law, which position of the said Trustee the said Rutherford says is not sound.

B. That it would be prejudicial, and therefore inequitable, to allow a re-examination of the claim—for Fifteen Thousand Dollars ($15,000.00)—at this late day for the reason that it would involve the said Rutherford in double expense and cost in relation to what would be practically two separate proceedings—the case involving the note of said Rutherford for Thirty Eight Thousand Dollars ($38,000.00) being now already in the Circuit Court of Appeals. The said Rutherford says that the facts, briefly stated, upon

which this ground of demurrer is predicated, consist in the following:

That the voluntary petition of Nancy Jane Varney was filed on the 3rd day of August, 1925; that she was adjudicated a bankrupt on August 18, 1925; that on the latter day petitioner Elliott was appointed Trustee; that on the said 18th day of August, 1925, Rutherford filed proof of his claim, the claim consisting of two notes, one of $15,000.00, and the other of $38,000.00—the aggregate of the notes with interest being, according to the proof, $54,501.25; that on the last named date the Trustee filed objections incorporated in a petition to expunge so much of the claim as related to the $38,000.00 note—both notes having been set up in the same proof of claim—but did not object or except to, nor move to expunge the item of $15,000.00; that subsequently, on two separate occasions, Elliott amended his objections and petition, but each time confined his objections and amendments to the $38,000.00 note, at no time challenging the validity of the $15,000.00 note. On the said 18th day of August, 1925, the Referee entered an order allowing the $15,000.00 note as a valid claim against the [fol. 37] estate. That in February 1926, a dividend of ten per cent (10%) on the $15,000.00 note was by the Referee ordered paid and that thereupon the Trustee did pay the same out of the estate. Of the said Nancy Jane Varney, or out of the estate of Pricy A. Varney, or out of both estates, the precise facts arising on this matter will be shown by the records on file in the Referee's office.

And on motion to expunge the Thirty eight Thousand Dollars ($38,000.00) note, the Referee on April 30, 1926, did sustain the same; that on May 12, 1926, Rutherford by his petition sought a review of the Referee's decision on the $38,000.00 note; that the matter was heard by District Judge Cochran, and his decision rendered on November 3, 1926, adversely to Rutherford; that an order granting an appeal was had and the case was taken to the Circuit Court of Appeals for review; that briefs were filed and oral arguments made, and that at this time the said case is in the breast of the Court awaiting final decision by that tribunal.

That it would be highly inequitable, unjust and prejudicial to Rutherford at this late day for the Court to allow a re-examination of so much — Rutherford's claim as relates to the $15,000.00 note, for if this be done it will involve

Rutherford in practically double expense of conducting the litigation, including traveling expenses of counsel, the procuring and certification of the record and the printing of the same; preparation and printing of briefs and double time of counsel in attendance upon the various courts—the Referee's Court, the District Court and the Circuit Court of Appeals. The said Rutherford says that therefore for this reason the prayer of the petition last filed by the Trustee ought not to be granted.

(6) The claimant A. G. Rutherford, further filed an amended proof of claim, setting up protest duly made, with copy thereof. It is admitted that protest was made in proper time and in due form.

(7) It was stipulated before the Referee that Nancy Jane Varney at the date of adjudication in bankruptcy had personal knowledge of the insolvency of the maker and all endorsers of the note in question, and that nothing could be realized by the claimant then or since from any obligor, except such payment as might be obtained through dividends from the estate of the maker, Pricy A. Varney. That when said note matured, it was duly and regularly presented for payment, where payable, payment refused, the note dishonored and protested, and due and regular notice of protest given to the endorser, the bankrupt.

[fol. 38] (8) The matter was submitted on the petition, answer and stipulation, and the Referee overruled the petition to examine the claim.

(9) The petition for review was duly taken to the District Court, and that court affirmed the order of the Referee, directing the allowance of the claim 4 day of June, 1929.

Agreed.

Browning & Reed, Stratton & Stephenson, Solicitors for Appellant, W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney. Randolph Bias, Goodykoontz & Slaven, Solicitors for A. G. Rutherford.

Approved. A. M. J. Cochran, District Judge.

Citation, in usual form, showing service on Goodykoontz & Slaven, omitted in printing.

[fols. 39 & 40] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 41] Appearance of counsel omitted in printing.

Minute entry of argument and submission, February 19, 1930, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

JUDGMENT—Filed April 18, 1930

No. 5456

Appeal from the District Court of the United States for the Eastern District of Kentucky

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Kentucky and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be and the same is hereby reversed and remanded for further proceedings consistent with the opinion of this court.

[fol. 42] IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—Filed April 18, 1930

No. 5457

Appeal from the District Court of the United States for the Eastern District of Kentucky

This cause came on to be heard on the transcript of the record from the District Court of the United States for

the Eastern District of Kentucky and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be and the same is hereby reversed and remanded for further proceedings consistent with the opinion of this court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—Filed April 18, 1930

No. 5458

Appeal from the District Court of the United States for the Eastern District of Kentucky

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Kentucky and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be and the same is hereby reversed and remanded for further proceedings consistent with the opinion of this court.

[fol. 43] IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—Filed April 18, 1930

No. 5459

Appeal from the District Court of the United States for the Eastern District of Kentucky

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Kentucky and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be and the same is hereby reversed

and remanded for further proceedings consistent with the opinion of this court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

OPINION—Filed April 18, 1930

Nos. 5456-7-8-9

Before Denison and Hicks, Circuit Judges, and Raymond, District Judge

Per CURIAM:

The several appellees are claimants against the bankrupt estates of Nancy Jane Varney and/or Pricy A. Varney for amounts due upon promissory notes upon which bankrupts are indorsers. The issues are substantially the same in each case and the fundamental question presented (except as hereinafter noted) is the same as that considered in the case of First National Bank of Pikeville, Kentucky, v. Elliott, 19 Fed. (2d) 426 (C. C. A. 6). It was concluded in that case that debts which are provable in bankruptcy within any of the categories of sec. 63-a of the Bankruptcy Act must be such as are subject to liquidation as of the date of the filing of the petition, and which then exist as a fixed liability absolutely owing, whether or not then due [fol. 44] and payable. None of the notes in question had matured at the time the petition in bankruptcy was filed and on none of the notes was there waiver of protest, demand, presentment, or notice. The Uniform Negotiable Instruments Act in force in Kentucky states without qualification the warranty of an indorser as follows:

"And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it." Carrolls Ky. Stat. 1930 Ed., 3720b-66.

The Kentucky Statutes also provide that presentment for payment is necessary in order to charge indorsers, except under circumstances not existing in this case. (See

sec. 3720b-70 Carrolls Ky. Stat., 1930 Ed.) None of the notes having matured prior to adjudication there had been, of course, no presentment or notice of dishonor. These obligations were therefore not such as at the date of the filing of the petition existed as a fixed liability absolutely owing.

It is sought to distinguish the First National Bank case (above cited) from the present cases upon the fact that in that case the notes sought to be proved were collateral notes indorsed by the bankrupt and attached to other notes owned by claimants to which the bankrupts were not parties. Under our interpretation there made of sec. 63-a of the Bankruptcy Act this difference cannot affect the result. The distinction is not between collateral and direct obligations, but between those which are fixed and absolute, and those which are merely contingent.

A further question arises out of these facts: the several claims were filed and allowed on August 18th, 1925. In February, 1926, a dividend of 10 per cent was paid on each note. On July 25, 1927 (about two and a half months after decision of the First National Bank case), the trustee filed a petition to re-examine and expunge the several claims upon the ground that upon the date of the adjudication they were not due and that there was not a fixed liability owing [fol. 45] at the time of the filing of the petition in bankruptcy. The answers to these petitions alleged laches, provability under sec. 63-a, and estoppel by reason of delay and payment of dividends. In 5456, 5457 and 5458 the referee sustained the petition to re-examine and was overruled by the District Court. As to the Rutherford claim, it was also urged that a petition for re-examination upon another note in favor of the same claimant had been already adjudicated, and without making any objection to this claim. This petition to expunge was denied by the referee, who was sustained by the District Court. Sec. 57-k of the Bankruptcy Act provides:

"Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part according to the equities of the case, before but not after the estate has been closed."

We find in the record no evidence of injury, prejudice, or disadvantage to claimants which would make it inequi-

table to allow the trustee to file his petition for re-examination. In re Star Spring Bed Co., 265 Fed. 133; In re Calendonia Coal Co., 254 Fed. 742.

In view of the provisions of sec. 57-l of Bankruptcy Act, which says: "Whenever a claim shall have been reconsidered and rejected in whole or in part, upon which a dividend has been paid, the Trustee may recover from the creditor the amount of the dividend received upon the claim, if rejected in whole, or the proportional part thereof, if rejected only in part," it seems clear that the mere payment of dividend upon a claim cannot operate as an estoppel to a petition later filed to re-examine and expunge.

The orders of the court below are reversed, and the cases remanded for further proceedings in accordance with this opinion.

[fol. 46] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 47] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 239

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 48] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 240

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 49] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930.

No. 241

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 50] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 242

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,161. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 239. Alvis Maynard, Administrator of Mary A. Ronan, Deceased, Petitioner, vs. W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney and Pricy A. Varney. File No. 35,162. U. S. Circuit Court of Appeals, Sixth Circuit. Term No.

240. John B. Varney, Petitioner, vs. W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney and Pricy A. Varney. File No. 35,163. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 241. J. M. Smith and A. B. Scott, Petitioners, vs. W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney and Pricy A, Varney. File No. 35,164. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 242. A. G. Rutherford, Petitioner, vs. W. K. Elliott, Trustee in Bankruptcy of Nancy Jane Varney and Pricy A. Varney. Filed June 30, 1930. File No-. 35,161, 35,162, 35,163, 35,164.

(44)